85-1810 (3)

Supreme Court, U.S.
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CASE NO.

IN THE
SUPREME COURT
OF THE
UNITED STATES
October Term, 1985

JERRY B. SCHREIBER,
Personal Representative
of the
ESTATE OF
THEADORES W. ROSS,
Petitioner,

vs.

CHASE FEDERAL SAVINGS
AND LOAN ASSOCIATION,
Respondent.

ON WRIT OF CERTIORARI FROM THE
SUPREME COURT OF FLORIDA

OPPOSING BRIEF OF RESPONDENT

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20 pp

QUESTIONS PRESENTED FOR REVIEW

I

Whether Petitioner has been deprived of real property and due process as guaranteed in the Fifth and Fourteenth Amendments of the Constitution of the United States by the Judgment of the Supreme Court of Florida?

II

Whether the Supreme Court of FLorida improperly usurped the power of the Legislature when it removed the common law protection in the conveyance of real property?

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STATEMENT OF CASE

Beyond the statement of the case made by Petitioner, Respondent deems the following as necessary to correct any inaccuracy or omissions in Petitioner's statement.

The Trial Court held that the PEREZES were not on notice of any infirmity in the earlier deeds between ROSS and COURNOYER. That Court held that the PEREZES, having paid a valuable consideration, were subsequent bona fide purchasers of the property from COURNOYER. The Third District Court of Appeal of Florida initially per curiam affirmed the Trial Court decision.

The Third District Court of Appeal of Florida subsequently on motion for rehearing en banc granted, reversed

itself holding that love and affection could not be a valuable consideration between two non-related parties and that the PEREZES were therefore on notice and could not claim their status as bona fide purchasers for value.

> "We emphasize the limited nature of our ruling, which is determined by the express 'love and affection' statement -- the epitome of a 'red flag' -- on the face of the deed. If it had contained only the usual recital of a 'good and valuable consideration,' Mrs. Ross could not have asserted, and a subsequent purchaser would, without more, not have been on notice that the consideration was legally insufficient and the deed invalid on that ground. See Mexican Crude Rubber Company v. Ackley, 101 Fla. 552,134 So. 585 (1930); Daniell v. Sherrill, 48 So.2d 736 (Fla. 1950)." Schreiber v. Chase Federal Sav. and Loan Ass'n., 422 So.2d 911 (Fla. 3rd DCA 1982) at page 913, footnote 3.

The Florida Supreme Court in

its initial review of this matter, Petitioner's Appendix B, stated:

> "The specific issue is whether a deed which shows on its face that the consideration is "love and affection," but does not show on its face that the grantor and grantee are related by blood or marriage, places a subsequent grantee on notice that the deed may be void."

The Florida Supreme Court resolved that issue by asserting, Petitioner's Appendix B:

> "With regard to the merits of the instant case, we agree that, in accordance with the District Court's decision in Havris, (Florida National Bank & Trust Co. v. Havris, 366 So.2d 491 (Fla. 3rd DCA 1979), a deed given to a non-relative in return for "love and affection" is without consideration and is invalid."

Upon rehearing, the Florida

Supreme Court in its subsequent opinion, Petitioner's Appendix A, stated:

> "The specific issue is whether a deed which shows on its face that the consideration is "love and affection", but does not show on its face that the grantor and grantee are related by blood or marriage, is effective to pass title."

This time, the Florida Supreme Court resolved the issue by asserting, Petitioner's Appendix A:

> "We hold that the deed was valid and effective to pass legal title notwithstanding that there was no valuable consideration paid, and the grantor and grantee were not related."
>
> "It follows from our holding that the estate of Mrs. Ross is not entitled to have the deed set aside on the ground that it was void. Nor does the Estate have any equitable claim superior to that of the subsequent purchasers and mortgagee on the ground that they had notice of the defect in

> the deed, because there was no defect in the deed."

It is from this final opinion of the Court of last resort for the State of Florida that Petitioner seeks review.

SUMMARY OF ARGUMENT

The issues presented for review by this cause question the requirement of consideration as affecting the validity of a conveyance of real property within the State of Florida, and whether a lack of consideration could serve as notice, warning a subsequent purchaser to inquire as to the blood or marital affinity between the grantor and grantee. This cause has been reviewed four times by the Appellate Courts of Florida and does not present a substantial federal quetion. As there are adequate and independent State grounds for the opinion, there is no reason presented for this Court to exercise its discretionary review of the same.

ARGUMENT I

THE PETITIONER HAS NOT BEEN DEPRIVED OF REAL PROPERTY AND DUE PROCESS AS GUARANTEED IN THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES BY THE JUDGMENT OF THE SUPREME COURT OF FLORIDA.

Petitioner argues jurisdiction vests pursuant to Title 28 USC, Section 1257(3) by virtue of a denial of constitutional rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution. Petitioner argues that the Florida Supreme Court Opinion which purportedly expanded a 1968 Amendment to the Constitution of that State, and which purportedly heard an issue raised for the first time on a Petition for Rehearing, effected the denial. Petitioner asserts that while the Supreme Court of Florida did not expressly rule on federal

constitutional rights, that an actual determination by the State Court is not required in order for jurisdiction to vest. Petitioner asserts that the State Court decision, purportedly resting on State grounds, does not preclude this Court from discretionary review.

The Constitutional and Statutory provisions, which Petitioner asserts this case involves, are restricted to Article X, Section 4(c) and Article II, Section 3 of the Florida Constitution as revised in 1968, and Florida Statute Section 2.01(1983). On its face, the Petition for Writ of Certiorari does not present a federal question.

While neither controlling nor

fully measuring this Courts' discretion, Supreme Court Rule 17 indicates the character of reasons that will be considered in governing review on certiorari. The review of a State Court decision must find that the State Court of last resort has decided a federal question in a way in conflict with a State Court of last resort or Federal Court of Appeal or that the State Court has decided an important question of federal law. The case which Petitioner seeks review of by this Court, presents neither.

As shown by tracing the lower court decisions, the Trial Court set the issue which, with collateral issues, was to be reviewed on four separate occasions by the Appellate Courts of Florida. As

set forth in Respondent's Statement of the Case, the issue was initially one of notice. The Trial Court and Appellate Courts all approached this issue of notice and resolved it without resorting or referring to any federal laws of substance or procedure.

In responding to the issue of notice, the Florida Supreme Court also resolved the issue of the validity of a deed without consideration. That opinion, which was contrary to an earlier Third District Court of Appeal of Florida Opinion requiring consideration, Havris, supra, and the earlier Third District Court of Appeal's Opinion in Schreiber v. Chase Federal, supra, presents no issue which would invoke the discretionary jurisdiction of this Court.

Neither the resolution of the issue of notice nor the resolution of the issue of consideration raise a substantial federal question.

While the issues dealing with notice and with the validity of a deed without consideration have been raised at each level of the proceedings below, the Petitioner did not raise the federal questions purportedly presented here until a petition for rehearing. The federal questions were not entertained by the Florida Supreme Court and come too late to be entertained by this Court.

ARGUMENT II

THE FLORIDA SUPREME COURT DID NOT IMPROPERLY USURP THE POWER OF THE LEGISLATURE NOR DID IT REMOVE THE COMMON LAW PROTECTION IN THE CONVEYANCE OF REAL PROPERTY.

Respondent is unaware, as was the majority of the Florida Supreme Court, of any statutory or common law protection or requirement asserting that a valid conveyance of real property, with no monetary consideration, can only be made between a grantor and grantee who are related by blood or marital affinity. In fact, neither Sections 689.01, 689.02, 689.03 nor 689.09 Florida Statutes (1977) contain any legislative mandate or mention of a requirement of consideration for a conveyance of real property to be valid.

Respondents suggest that a foundation of this Court is based on not reviewing opinions of State Courts when those opinions rest on non-federal grounds. Respondent asserts that adequate and independent State grounds exist within the well reasoned opinion of the Florida Supreme Court (Petitioner's Appendix A) and that this Court should not exercise its discretionary review of the same.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing Opposing Brief of Respondent were mailed, postage prepaid, pursuant to Supreme Court Rules 28.3 and 28.4 to: Jerry B. Schreiber, Esq., 207 Biscayne Building, 19 West Flagler Street, Miami, Florida 33130 and Joseph McGowan, Esq., Route 3, Box 3392, Blue Ridge, Georgia 30513, this 5th day of May, 1986.

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By _____
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STATE OF FLORIDA)
)ss
COUNTY OF DADE)

Personally before the undersigned authority appeared Frank R. Gramling, who, under oath and from his own personal knowledge, states that the foregoing Certificate of Service is true and correct. Dated May 5, 1986.

Nancy J. Chapnick
Notary Public, State of Florida at Large.

My Commission Expires:

Notary Public, State of Florida at Large
My Commission Expires April 19, 1989
Bonded thru Maynard Bonding Agency